



March 11, 2017

**BY ELECTRONIC MAIL**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (2822T)  
Washington, D.C. 20460  
[HQ.FOIA@epa.gov](mailto:HQ.FOIA@epa.gov)

**Re: Freedom of Information Act Request and Request for Fee Waiver**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Environmental Protection Agency ("EPA") regulations promulgated at 40 C.F.R. § 2, WildEarth Guardians hereby requests the following records from the EPA:

1. Any and all records related to the EPA's proposal to promulgate a Federal Implementation Plan to address air emissions from oil and natural gas operations within the Uinta and Ouray Indian Reservation of Utah. This proposal has been docketed as EPA-R08-OAR-2015-0709. We request all records related to this proposal specifically, as well related broadly to any proposal to promulgate a Federal Implementation Plan to address oil and gas air emissions within the Uinta and Ouray Indian Reservation.

For purposes of this request, records include, but are not limited to, electronic mail messages, maps, draft documents, photos and/or videos, recorded voicemails, GIS data, GPS data, handwritten notes, meeting or phone conversation notes, applications for permits to drill, reports, and any other records of correspondence. We do not request any records that are already publicly available online on an EPA website that is not subject to alteration or elimination, whether temporarily or permanently.

**Request for Fee Waiver**

WildEarth Guardians requests that you waive all fees in connection with this matter if this request is treated as a FOIA request. As shown below, we meet the two-pronged test under FOIA for a fee waiver, 5 U.S.C. § 552(a)(4)(A)(iii):

**I. Disclosure of this information is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.**

In considering whether WildEarth Guardians meets this fee waiver criteria, it is imperative that the EPA remember that FOIA, in general, carries a presumption of disclosure and that the fee waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as WildEarth Guardians access to government documents without the payment of fees. As stated by one Senator, “[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . .” 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). In interpreting this amendment, the 9th Circuit has stated:

The amended statute ‘is to be liberally construed in favor of waivers for noncommercial requesters.’ (citing Sen. Leahy). The amendment’s main purpose was ‘to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA.’ (citing Sen. Leahy).

*McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). Thus, both Congress and the courts are clear in their interpretation that the main legislative purpose of the amendments is to facilitate access to agency records by watchdog organizations, such as environmental groups, which use FOIA to monitor and challenge government activities. As the D.C. Circuit Court has stated:

This waiver provision was added to FOIA ‘in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,’ in clear reference to requests from journalists, scholars, and, most importantly for our purposes, nonprofit public interest groups.

*Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986), quoting *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984).

**A. The subject of the request concerns “the operations and activities of the government.”**

As this is a request for documents from an executive branch agency, the EPA, it is clear that this request concerns the operations and activities of government. The information is directly related to the agency’s regulation of air quality within the Uinta and Ouray Indian Reservation of Utah.

**B. The disclosure is “likely to contribute” to a public understanding of government operations or activities (the informative value of the information to be disclosed and ability to disseminate).**

The information requested will help provide crucial insight into the EPA’s rationale behind the development of any Federal Implementation Plan to address emissions from oil and

gas operations within the Uinta and Ouray Indian Reservation. The requested information will shed light on the agency's thinking behind the Federal Implementation Plan and where the agency currently stands on the issue of oil and gas emissions subject to its regulation in Utah. While the Federal Implementation Plan proposal has been docketed, there is no detailed information available to the public regarding the proposal and any deliberations that may have occurred or may be occurring related to the proposal.

WildEarth Guardians has specifically and consistently demonstrated its ability to disseminate information relative to policies and regulatory practices, and has specifically demonstrated this ability in relation to EPA actions. We accomplish this information dissemination through printed media (both paid media and earned media), our email list, listserves to which we post, printed publications we write and distribute via mail and the internet, articles and essays for other public interest organizations, and public meetings held or sponsored by us, other nonprofit public interest entities, or federal agencies.

Over the years, EPA has consistently granted our requests for fee waivers under FOIA, recognizing our ability to effectively disseminate information received under FOIA. EPA Headquarters and its Regional Offices have granted us fee waivers in conjunction with similar FOIA requests. Other federal agencies, including the U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Office of Surface Mining Reclamation and Enforcement, U.S. Forest Service, and U.S. Bureau of Reclamation, also consistently grant our requests for fee waivers.

WildEarth Guardians is a non-profit organization that informs, educates, and empowers the public regarding environmental issues, policies, and laws. We have been involved in EPA regulation of air quality within the Uinta and Ouray Indian Reservation for many years. We have met with EPA staff regarding the issue of ozone pollution within this area and regularly conveyed concerns to the agency regarding the impact of oil and gas development to air quality in the region.

Our organization plays an active role in informing the American public about EPA regulation of air quality. We have been regularly interviewed and quoted by the news media with regards to EPA decisions and proposals, including actions related to the management of air quality throughout the region. With the requested information, we intend to continue to inform, educate, and empower the public regarding the issue of air quality in the Uinta Basin region of Utah.

In granting a fee waiver to WildEarth Guardians, it is important to recognize that (1) our requested information will contribute significantly to the public understanding of the operations or activities of the government, (2) our requested information will enhance the public's understanding to a greater degree than currently exists, (3) WildEarth Guardians possesses the expertise to explain the requested information to the public, (4) WildEarth Guardians possesses the ability to disseminate the requested information to the general public, (5) and that the news media recognizes that WildEarth Guardians is an established expert in the field of EPA regulation of air quality.

WildEarth Guardians staff and contractors responsible for interpreting, compiling and presenting this information to the public in an understandable manner possess the requisite experience, intelligence and expertise to carry out this task. WildEarth Guardians has consistently proven its ability to disseminate information obtained from the EPA.

**C. The disclosure is likely to contribute “significantly” to public understanding of government operations or activities.**

Public oversight and enhanced understanding of how the EPA is overseeing air quality regulation in the Uinta Basin of Utah is necessary to ensure the public is fully aware of how the EPA is protecting clean air in the region.

WildEarth Guardians’ track record of active participation in and oversight of issues related to EPA regulation of air quality, and our contribution to the public’s understanding of these issues compared to the level of public understanding prior to disclosure are well established. In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is:

“whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.”

*Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994) (emphasis added).

The information requested in this FOIA request will be used to contribute to one or more of the following: printed and/or online maps, petitions, local and national newsletters, public presentations, e-mail and postal mail publications, and local and national news stories contributed to or written by WildEarth Guardians and its members. The most likely sources of dissemination will be through the print and online media, although it may also be disseminated through other public advocacy channels and associated media work and mailed publications.

WildEarth Guardians will also disseminate the requested information via a publicly accessible “repository” website where Guardians’ Climate and Energy Program posts FOIA requests and responses from federal agencies. This website is available here, <https://climatewest.org/wildearth-guardians-climate-and-energy-program-foia-repository/>.

1. The use of these records will add new and different information to the public understanding.

The information requested has not yet been fully analyzed, summarized, and disseminated by any member of the public, thus its use will add new and different information to public understanding.

2. Whether all or a portion of the broadscale records will be used to enlighten the public.

We do not consider this request to be broadscale, but a specific and focused request for records related to an EPA proposal to address air quality issues in the Uinta Basin of Utah through the promulgation of a Federal Implementation Plan.

3. Whether any of the records consist of generic information that lacks substantial informative value.

It is our belief that there is no ‘generic’ information on this topic, due to the public’s limited perception of this subject.

4. Whether any of the requested information has already been publicly available either in a duplicative or a substantially identical form, or is readily available from another source.

To the best of our knowledge, none, or at least very little, of the information requested in this FOIA has been released to the public. If portions of the requested information have been released to the public and are readily available and accessible from another reliable and permanent source, we request the EPA please inform us of this situation.

## **II. Obtaining the information is of no commercial interest.**

Access to government records, information, and similar materials through FOIA requests is essential to WildEarth Guardians’ role of educating the general public. WildEarth Guardians, a non-profit organization, has no commercial interest and will realize no commercial benefit from the release of the requested information.

Should you decide not to waive fees, we request that you contact us prior to incurring any costs in excess of \$25. Please feel free to request additional information concerning our fee waiver request if you believe it is needed to make a final decision.

If you elect to withhold any records responsive to this request under Exemption 5 of FOIA, please explain:

1) Why is each record predecisional?

- a. To what decision are each of the documents leading toward?
- b. Has this decision been finalized?

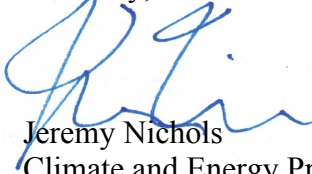
2) Why is each record deliberative?

- a. To what extent does each make a recommendation on a legal or policy matter?

3) What policy recommendation qualifies the record for exemption?

We look forward to your reply within twenty working days as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions, concerns, or would like to discuss this FOIA request in more detail, please contact me at the information below. Thank you.

Sincerely,



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